

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	
	)	
ARCTIC EXPRESS, INC.,	)	Case No. 03-66797 DEC
	)	
and	)	Chapter 11
	)	
D&A ASSOCIATES, LTD.,	)	Jointly Administered
	)	
Debtors and	)	
Debtors in Possession.	)	
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	)	
ARCTIC EXPRESS, INC.,	)	
Debtor in Possession,	)	
	)	
Plaintiff,	)	
	)	Adversary Proc. No. 04-02332
v.	)	
	)	
DEL MONTE FRESH PRODUCE N.A., INC.	)	
d/b/a Del Monte Fresh Produce Company,	)	
	)	
Defendant.	)	
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**REPLY TO COUNTERCLAIMS**

COMES NOW the Plaintiff, Arctic Express, Inc. (hereafter, AArctic@ or the APlaintiff@), by and through its attorneys, and answering the Counterclaims of Defendant states as follows:

1. To the extent an answer is required of Plaintiff as to Paragraph 1 of the Counterclaims, Plaintiff denies the allegations contained therein.
2. Responding to Paragraph 2 of the Counterclaims, Plaintiff admits that on various dates during 1998 through 2001, it undertook to transport cargo consisting of fresh fruit at the behest of Defendant. Further answering, Plaintiff states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of all remaining allegations comprising

Paragraph 2 of the Counterclaims and, accordingly, denies the same.

3. Plaintiff denies the allegations contained in Paragraphs 3 and 4 of the Counterclaims.

4. Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraphs 5 and 6 of the Counterclaims and, accordingly, denies the same.

5. Plaintiff denies each and every allegation contained in Paragraph 7 of the Counterclaims.

6. Responding to Paragraph 8 of the Counterclaims, Plaintiff incorporates by reference its answers to Paragraphs 1 through 7 of the Counterclaims as if fully re-stated herein.

7. Responding to Paragraph 9 of the Counterclaims, Plaintiff admits that it agreed to deliver cargo tendered to it by the Defendant. Further answering Paragraph 9 of the Counterclaims, Plaintiff states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of all remaining allegations and, accordingly, denies the same.

8. Plaintiff denies each and every allegation set forth in Paragraphs 10 and 11 of the Counterclaims.

9. Responding to Paragraph 12 of the Counterclaims, Plaintiff incorporates by reference its answers to Paragraphs 1 through 11 of the Counterclaims as if fully re-stated herein.

10. Plaintiff states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations comprising Paragraph 13 of the Counterclaims and, accordingly, denies the same.

11. Plaintiff denies each and every allegation set forth in Paragraphs 14 and 15 of the Counterclaims.

12. Plaintiff denies the allegations contained in Paragraphs 16 and 17 of the Counterclaims.

**AFFIRMATIVE DEFENSES**

13. Plaintiff denies each and every allegation set forth in the Counterclaims and not expressly admitted as true herein.

14. Defendant's Counterclaims fail to state a claim upon which relief can be granted.

15. Defendant's Counterclaims are barred by the doctrines of waiver, estoppel and laches.

16. Defendant's Counterclaims are barred by its breach of contract.

17. Defendant's Counterclaims are barred by the applicable statute of limitations.

18. Defendant's Counterclaims are barred by its contributory negligence.

WHEREFORE, Plaintiff respectfully requests that Defendant's Counterclaims be dismissed, that Plaintiff be awarded its costs and expenses in defending against said Counterclaims, and that Plaintiff be awarded such additional and further relief, at law or at equity, that justice requires.

Respectfully submitted,

CHESTER, WILLCOX & SAXBE LLP

/s/ Guy R. Humphrey

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply to Counterclaims has been served this 24th day of August, 2004, via First Class U.S. Mail, postage prepaid, upon the following parties:

Bruce Schrader, II, Esq.  
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/s/ Guy R. Humphrey  
Guy R. Humphrey